Page 111.

Mr. Britton: Now, you were asked about placing the scales at Dollar Junction. If that was done all of the traffic interchange at Dollar Junction could use those scales, couldn't it?

Mr. Scott: Well——

Mr. Britton: They would not be available for Iron Mountain use for traffic at Huttig?

Mr. Scott: No, sir.

Mr. Britton: And would a weigh master have to be kept there if——

Mr. Scott: A weigh master would have to be retained at Dollar Junction, and also at Huttig.

Page 112.

Examiner Hagerty: Which would be the more expensive to maintain, another scale and weigh master at Dollar Junction, or continue the movement of cars back and forth to the scale the way you do now?

Mr. Scott: Well, the way it is handled at the present is the practical operation, the way it has been done all the time.

Examiner Hagerty: Well, I say, which would be the more expensive method, to install another scale at Dollar Junction, or to continue under the present practice of handling the cars back and forth this additional distance to reach the scale?

Mr. Scott: It would be more expensive to install scales at Dollar Junction.

51 Examiner Hagerty: You think it would?

Mr. Scott: Yes, sir.

Mr. Britton: These scales are maintained under the supervision of the association, are they not?

Mr. Scott: Maintained under the supervision of the Western Weighing Association?

(Here follows blue-print marked page 52.)

53 *Answer of Interstate Commerce Commission.*

Filed in U. S. District Court May 29, 1920.

In the District Court of the United States, Western District of Arkansas, Texarkana Division.

In Equity.

No. 14.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Petitioner,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of Interstate Commerce Commission.

The Interstate Commerce Commission, one of the parties respondent in the above-entitled cause, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answers and says:

This respondent, which for convenience will be referred to hereinafter as the Commission, admits that the allegations contained in paragraphs I to III, inclusive, of the petition are true.

The Commission alleges that it made and entered the order
54 dated June 10, 1919, set forth in paragraph III of the petition, in a proceeding then pending before it, known as I. & S. Docket No. 11, wherein petitioner was a party.

The Commission further alleges that said proceeding was instituted and prosecuted for the purpose, among other things, of determining the questions of whether the divisions of through rates for the transportation of interstate traffic, paid to petitioner by the St. Louis, Iron Mountain & Southern Railway Company, the Missouri Pacific Railway Company, and other common carriers, subject to the interstate commerce act, were unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, within the meaning of, and in violation of, said act; that in connection with said questions the full hearing provided for in section 15 of said act was accorded to petitioner; that at said hearing a large volume of testimony and other evidence bearing upon said questions was submitted to the Commission for consideration on behalf of petitioner and others by counsel; that at said hearing and subsequently, both orally and in briefs filed in said proceeding, said questions were fully argued, and the matters involved in said proceeding were submitted to the Commission for determination on behalf of petitioner, by its counsel,

whereupon the Commission determined said questions and made a report, stating the Commission's decision, conclusions, and requirement in the premises, and also made an order based thereon; that said report and order were duly served upon petitioner; and
55 that in and by said report the Commission said:

In our original report in this proceeding, 40 I. C. C., 470, dealing with the question of divisions to the Louisiana & Pine Bluff Railway, it was found that the distance from the Union mill at Huttig, Ark., one of the plants served by the tap line, to the connection with the St. Louis, Iron Mountain & Southern Railway, hereinafter called the Iron Mountain, at Dollar Junction was 2.41 miles. Including an out-of-line movement from the Union mill to the track scale, the distance was 3.25 miles, but the Commission held that an out-of-line or diverted movement to a track scale may not, under the second supplemental report in The Tap Line case, 31 I. C. C., 490, be included in computing the distance upon which the division that a tap line may receive is to be determined.

It was further found that the maximum division which the tap line might properly receive for services performed, as fixed in the report last above cited, should not be more than $3 per car for the movement from the Union mill to Dollar Junction. This amount being within the maxima fixed in the order of July 29, 1914, entered in connection with the second ssupplemental report, no further order was deemed necessary. The Louisiana & Pine Bluff, however, refused to accept this amount of $3 per car for switching from the Union mill to Dollar Junction or to make settlement on that
56 basis for services that had been rendered during the pendency of this proceeding. Thereupon, the Missouri Pacific Railroad, successor to the Iron Mountain, filed its petition for an order to give effect to our findings. Under a rule to show cause why such order should not be entered the Louisiana & Pine Bluff petitioned for further oral argument, which was granted and the case was reargued before the Commission.

No question is or was raised as to the correctness of the facts stated in the Commission's previous report, but it was contended that the track scales, owing to inadequate drainage and other conditions, could not be located between the Union mill and the junction; that the out-of-line haul from the Union mill to the scale and thence to the junction with the Iron Mountain, a distance, as stated, of 3.25 miles, is actually necessary in the handling of the lumber; and that the Louisiana & Pine Bluff is entitled to compensation for services based on that distance. It is denied that any device for securing larger divisions inheres in that method of computing the distance. The track scales are on the main line of the Missouri Pacific and are owned and maintained by that road. It also appears that the movement of the cars from the Union mill to the scales, and for part of the distance from the scales, to Dollar Junction, is over the main line of the Missouri Pacific under a trackage arrangement. The evidence does not show that it is necessary that the shipments be weighed by the tap line rather than by the trunk line.

57 We have considered these contentions and the evidence submitted, but find no sufficient reason for modifying the findings stated in our previous report. Since that report was issued, however, the Commission has made its fifth supplemental order in The Tap Line case increasing the divisions which may be received by tap lines from their respective trunk line connections 50 cents per car for switching three miles or less and one-half cent per 100 pounds on traffic hauled more than three miles. These increased divisions are made effective June 1, 1919.

We adhere to our original finding in this proceeding, with the modification that the divisions accorded the Louisiana & Pine Bluff for switching interstate shipments of lumber and forest products from the Union mill at Huttig, Ark., to Dollar Junction, should not exceed $3 per car up to and including May 31, 1919, and $3.50 per car on and after June 1, 1919.

An appropriate order will be entered.

The Commission further alleges that in said proceeding, namely, I. & S. Docket No. 11, it held several hearings and made several reports as shown by the allegations contained in the petition in this suit; that at first it found the maximum reasonable division to be paid to petitioner, out of the aforesaid through rates, by the St. Louis, Iron Mountain & Southern Railway Company, the Missouri Pacific Railway Company, and other common carriers, for the transportation services here in question to be performed by petitioner,

58 to be $3 per carload, and that in the report mentioned in the above quotation, referred to by it as its "original report," the Commission found that the payment of any division, greater than $3 per carload, to petitioner for said services would be unduly preferential to petitioner and unduly prejudicial against common carriers other than petitioner who perform similar services. In this connection the Commission said:

In our second supplemental report in The Tap Line Case, 31 I. C. C., 490, we revised the views announced in the original proceeding, thus conforming our own course in these matters to the rulings of the Supreme Court in The Tap Line Cases, 234 U. S., 1; and after a very careful study of the question we there fixed switching allowances and divisions for general application in this southwestern territory. For a haul of 3 miles or less under our order in that proceeding, which order is still in force throughout the territory, a tap line may receive a maximum allowance of $3 a car. And this is the amount which the Iron Mountain has been paying to the Pine Bluff on lumber traffic from both mills at Huttig interchanged at Dollar Junction. The Pine Bluff, however, is here asserting that its haul to that junction is in excess of 3 miles, and that under our order in the case last cited it is therefore entitled not to a switching charge of $3 a car but to a division out of the through rate of 1½ cents per 100

59 pounds, or approximately $9 a car. It is important, therefore, that the distance from the two mills to Dollar Junction be accurately determined, and that, indeed, was one of the chief purposes in asking for a rehearing.

The measurements, which have been taken with care, show that

the mileage actually traversed by the cars when moving between the mill of the Wisconsin company and the trunk line connection at Dollar Junction is 3.40 miles; and that between the Union plant and the same connection a car moves 3.25 miles. The mere statement of these distances, however, is not sufficient, especially in view of the facts in this case. It is shown of record that these distances include out of line or diverted movements to the track scales of 840 feet, in the case of shipments of the Wisconsin company, and of 4,380 feet, in the case of shipments from the Union mill. If these distances be deducted from the total haul the actual necessary mileage covered by the cars in direct movement to Dollar Junction is 3.24 miles from the Wisconsin mill and 2.41 miles from the Union mill. In other words, the Pine Bluff, in order to bring about an increase in its earnings, claims to be entitled to compensation for an out of line haul to the scale track of nearly a mile. Were we to lend our approval to any such arrangement not only would the Pine Bluff be placed in a more advantageous position than any other tap line in this territory performing a similar service but such a ruling would open the way in the case of many tap lines for a relocation of their track scales so as to require a long back haul, and in that way to lay a basis for
60 divisions or allowances very materially in excess of those fixed by the Commission for the distance covered by a direct movement from the mill to the junction. Under the circumstances we can not lend our sanction to the demand for increased allowances to be paid to the Pine Bluff from the Union mill.

The Commission further alleges that subsequent to the date of said original report it found, upon additional evidence submitted to it in that connection, as above shown, that said division of $3 per carload might reasonably be increased to $3.50 per carload.

The Commission further alleges that said findings were, and are, and that each of them was, and is, fully supported and justified by the evidence submitted to the Commission at the hearings in said proceeding.

The Commission further alleges, that in making its reports and orders herein mentioned, it considered exhaustively and weighed carefully in the light of its own knowledge and experience every fact, circumstance, and condition called to its attention on behalf of the parties to said proceeding by their respective counsel, including all matters covered by the allegations of the petition herein.

The Commission further alleges that said division of $3.50 per carload will furnish to petitioner full, reasonable, fair, and just compensation for the aforesaid services to be performed by petitioner and covered by said division, and denies each of, and all, the allegations to the contrary contained in said petition.

61 The Commisison further alleges that said order of June 10, 1919, was not made or entered by it either arbitrarily or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order it did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of, and all, the allegations to the contrary contained in said petition.

The Commission further alleges that the findings of fact made by it as aforesaid, and upon which said order of June 10, 1919, was and is based, were the result of its consideration of all the evidence referred to in paragraph 8 of the petition herein, and a very large volume of other evidence, submitted to it at the different hearings in the aforesaid proceding, namely, I. & S. Docket No. 11, for consideration in determining, among other things, said questions, involved in this suit.

The Commisison further alleges that statements made by it in its decision in the case of Detroit Coal Exchange v. Michigan Central Railroad Company, referred to in paragraph 8 of the petition herein, have no relation to, or bearing upon, the questions before the court for determination in this suit, for the reason, among other reasons, that the transportation charges involved in said case pertain to the reweighing of shipments at points of destination.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the peti-
62 tion herein, in so far as they conflict either with the allegations in this answer, or with either the statements or conclusions of fact included in the Commission's said reports and orders, which are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove, as this Honorable Court shall direct, and thereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION.
By P. J. FARRELL,
W. R. McFARLAND,
Counsel.

CITY OF WASHINGTON,
District of Columbia, ss:

Joseph B. Eastman, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said Commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

JOSEPH B. EASTMAN.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this 24th day of May, 1920.

[SEAL.] ALFRED HOLMEAD,
[Notarial Seal.] *Notary Public.*

My commission expires July 10, 1924.

63 *Motion to Dismiss and Answer of the United States.*

Filed in U. S. District Court, May 31, 1920.

In Equity.

No. 44.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Petitioner,

v.

UNITED STATES OF AMERICA.

Motion of the United States to Dismiss the Petition.

United States of America, defendant, by its counsel, now comes and moves the court to dismiss the petition at the cost of petitioner. As grounds for this motion it is shown—

1. It does not appear from the face of the petition that the facts found by the Commission in its reports and orders do not support the order sought to be enjoined and suspended.

2. It appears from the face of the petition that the facts found by the Commission in its reports and orders in all respects support the order sought to be enjoined and suspended.

3. The petition seeks to put in issue, for hearing before and by the court, matters and things exclusively within the jurisdiction of the Commission, and beyond the jurisdiction of the court, to hear and determine.

4. The petition does not show that the Commission erroneously decided any question of law, that it proceeded irregularly, or that any constitutional or other right has been or will be invaded by its order.

5. The petition is without equity on its face and does not
64 state any cause of action against the United States.

Wherefore, defendant prays that its motion be sustained and that the petition be dismissed at the cost of petitioner.

Answer of the United States.

United States of America, defendant, by its counsel, now comes and for answer to the petition filed herein against it, says:

I. It has no knowledge of the matters and things alleged in Paragraph I, and it neither admits nor denies the same, and in so far as they become material on the hearing it will require strict proof thereof.

II. It admits petitioner was a party to Investigation & Suspension Docket No. 11, decided April 23, 1912; that findings were

made with respect to petitioner and are officially reported in XXIII Interstate Commerce Commission Reports 277, and Supplemental Report at page 549; and more particularly at pages 583 to 587 of the latter. Because of their length, defendant does not attach a copy of the report and supplemental report but the contents thereof are well known to petitioner, and defendant prays that the reports and each and every part of the same may be read and taken and considered as a part hereof as fully and completely as if wholly incorporated herein.

Petitioner was not a party to The Tap Line Case, 234 U. S. Reports, page 1, or to any case in any court which framed issues over any matter or thing decided by or involved in Investigation & Suspension Docket No. 11. The various decisions made in that case were based on issues made by companies whose geographical
65 location and facts and circumstances were vastly different from those of petitioner and did not directly affect petitioner.

It admits the Commission made and filed its Second Supplemental Report in I. & S. Docket No. 11, decided July 29, 1914, officially reported in XXXI Interstate Commerce Commission Reports, 490. The Commission made no specific finding or reference in the last mentioned report to petitioner. Because of its length, defendant does not attach a copy of the official report, but its contents are well known to petitioner, and defendant prays that the second supplemental report and each and every part of the same may be read and taken and considered as a part hereof as fully and completely as if wholly incorporated herein.

Subject to verification for possible error, defendant admits that the order in pursuance of the Second Supplemental Report was entered on July 29, 1914, as stated.

III. It has no knowledge of the matters and things alleged in Paragraph III on pages six, seven and eight of the petition, and neither admits nor denies the same, and in so far as they become material on the hearing it will require strict proof thereof.

Defendant alleges that on April 27, 1915, the Commission made and filed its Third Supplemental Report in I & S. Docket No. 11, officially reported in XXXIV Interstate Commerce Commission Reports, 116, with respect to the subject matter in controversy. Because of its length defendant does not attach a copy of the official report, but its contents are well known to petitioner, and defendant prays that the said report and each and every part of
66 the same may be read and taken and considered as a part hereof as fully and completely as if wholly incorporated herein.

It admits the Commission made and filed a further report in Louisiana & Pine Bluff Divisions (I. &. S. Docket No. 11), decided July 5, 1916, officially reported in XL Interstate Commerce Commission Reports, 470. Because of its length defendant does not attach a copy of the official report, but its contents are well known to petitioner, and defendant prays that the said report and each and every part of the same may be read and taken and considered as a part hereof as fully and completely as if wholly incorporated herein.

It admits the Commission made and filed its Supplemental Report in Louisiana & Pine Bluff Divisions (I. & S. Docket No. 11), decided June 10, 1919, officially reported in LIII Interstate Commerce Commission Reports, 475. Because of its length defendant does not attach a copy of the supplemental report, but its contents are well known to petitioner, and defendant prays that the said supplemental report and each and every part of the same be read and taken and considered as a part hereof as fully and completely as if wholly incorporated herein.

Subject to verification for possible error, defendant admits that the order in pursuance of the supplemental report of June 10, 1919, and of the previous report of July 5, 1916, was entered on June 10, 1919, as stated.

As to the allegations that petitioner refused to accept $3 per car and insisted upon receiving 1½ cents per 100 pounds for the haul from Huttig to Dollar Junction, and the filing of the petition by the Missouri Pacific Railroad Company for an order to give effect
67 to the findings announced by the Commission in its report and order in XL Interstate Commerce Commission Reports, 470, and as to further oral argument before the Commission, defendant has no knowledge with respect to those matters and things, and it neither admits nor denies the same, and in so far as they become material upon the hearing it will require strict proof thereof.

IV. It has no knowledge of the matters and things alleged in Paragraph IV, and it neither admits nor denies the same, and in so far as they become material on the hearing it will require strict proof thereof.

V. It has no knowledge that the blue print or map attached to the petition and marked "Exhibit A" is a true and correct blue print or map of the matters and things which it purports to represent, and it neither admits nor denies the same, and in so far as it becomes material on the hearing defendant will require strict proof thereof. It has no knowledge of the matters and things further alleged in Paragraph V, and it neither admits nor denies the same, and if they become material on the hearing it will require strict proof thereof, with this exception: that in so far as the facts alleged in Paragraph V coincide with the facts found by the Interstate Commerce Commission in its reports and orders, the defendant admits the same.

VI. It has no knowledge of the matters and things alleged in Paragraph VI, and it neither admits nor denies the same, and in so far as they become material on the hearing it will require strict proof thereof, with this exception: that in so far as the facts alleged in Paragraph VI coincide with the facts found by the Interstate Commerce Commission in its reports and orders, the defendant admits the same.

68 VII. It has no knowledge of the matters and things alleged in Paragraph VII, and neither admits nor denies the same, and in so far as they become material on the hearing it will require strict proof thereof, with this exception: that in so far as the facts

alleged in Paragraph VII coincide with the facts found by the Interstate Commerce Commission in its reports and orders, the defendant admits the same.

VIII. It denies that the appendix to Exhibit A attached to the petition is a complete transcript of all the testimony before the Interstate Commerce Commission on the point involved, which is obviously, on its face, not such a complete transcript. Defendant denies that the complete testimony before the Commission, or that the appendix to Exhibit A, in no wise contains any evidence in support of the order of the Commission.

Defendant denies that the decision in Detroit Coal Exchange v. Michigan Central, XXXVIII Interstate Commerce Commission Reports, 79, 84, in any wise supports the case of the petitioner; defendant alleges that if said report becomes material on the hearing, that the entire report, and not mere excerpts or extracts therefrom, should be taken and considered.

IX-X. The allegations of Paragraphs IX and X, and each and every part of the same, are denied.

Further answering the said petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied or otherwise traversed, defendant denies—

(*a*) Any fact or facts alleged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Interstate Commerce Commission in its reports and orders.

69 (*b*) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its reports and orders.

(*c*) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission in its reports and orders.

(*d*) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(*e*) Any fact or facts alleged in said petition, or any part of the same, which attack or which seek to attack the reports and orders of the Interstate Commerce Commission, and to show facts other than what the said reports and orders show on the face thereof.

(*f*) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and orders which, as shown on the face thereof, in fact were not so found.

(*g*) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with any

conclusions of law held by the Interstate Commerce Commission in its said reports and orders.

(*h*) Each and every allegation in the said petition contained not herein specifically admitted or denied.

Wherefore, having fully answered, defendant prays that
70 the petition be dismissed at the cost of the petitioners, and for such other and further orders as may be appropriate.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
EMON O. MAHONY,
United States Attorney,
Western District of Arkansas.

71 *Decree.*

Entered in U. S. District Court March 4, 1921.

In Equity.

No. 44.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Plaintiff,

vs.

UNITED STATES OF AMERICA, Respondent.

This cause came on for hearing before the Hon. Kimbrough Stone, Circuit Judge, and Hon. Jacob Trieber and Hon. Frank A. Youmans, District Judges, and by consent of parties the hearing was to be for final decree; whereupon it was ordered, adjudged and decreed that the Bill of Complaint be dismissed for want of equity at plaintiff's costs.

And thereupon the plaintiff prays an appeal to the Supreme Court and having filed its assignment of errors, the appeal is granted, returnable in thirty days, upon execution by the plaintiff of a cost bond in the sum of $500.00 to be approved by a Judge or the clerk of this court.

KIMBROUGH STONE,
U. S. Circuit Judge.
JACOB TRIEBER,
U. S. District Judge.
FRANK A. YOUMANS,
U. S. District Judge.

72 *Assignment of Errors.*

Filed in U. S. District Court March 4, 1921.

In Equity.

No. 44.

Louisiana & Pine Bluff Railway Company, Petitioner,

vs.

United States of America, Respondent.

Assignment of Errors.

Louisiana & Pine Bluff Railway Company, petitioner, now comes by its counsel and files the following assignment of errors on which it will rely on appeal to the Supreme Court of the United States from the order or decree of the District Court dismissing the petition entered March 4, 1921, in the above entitled cause:

The District Court erred:

I.

In dismissing the bill.

II.

In finding and deciding that the basis of the decision by the Interstate Commerce Commission in the order and decision complained of in the bill herein, was "that it had not been shown that it was necessary for the tap line rather than the trunk line to take this weight".

III.

In finding and deciding that the Commission interpreted and applied its order of July 29, 1914, 40 I. C. C., 470, which established the basis of tap line charges "as contemplating a direct haul from the loading point to the junction point without any diversion not made necessary to safely and properly reach such junction point".

73 IV.

In finding and deciding that the District Court cannot review the finding of the Commission, 53 I. C. C., 475, "the evidence does not show that it is necessary that the shipments be weighed by the tap line rather than by the trunk line".

V.

In finding no error of fact in the findings of the commission complained of in the petition, nor any misapplication of law thereon.

Wherefore, petitioner prays that the decree of the District Court entered March 4, 1921, dismissing the bill, be reversed, annulled and set aside with directions to enter a decree enjoining the order of the Commission, as prayed in the petition, and for such other and further order as may be appropriate.

BARKER & BRITTON,
Boatmen's Bank Bldg., St. Louis, Mo.;
GAUGHAN & SIFFORD,
Camden, Arkansas;
BORDERS, WALTER, BURCHMORE & COLLIN,
1623 First National Bank Bldg.,
Chicago, Illinois.
Solicitors for Petitioner.

HARRY C. BARKER,
ROY F. BRITTON,
T. J. GAUGHAN,
J. T. SIFFORD,
LUTHER M. WALTER,
JOHN S. BURCHMORE,
Of Counsel.

74 *Cost Bond on Appeal.*

Filed in U. S. District Court March 4, 1921.

44, Eq.

Know all men by these presents,

That we, Louisiana & Pine Bluff Ry. Co. as principal, and Milton Winham as surety, are held and firmly bound unto United States of America in the full and just sum of $500.00 to be paid to the said United States; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, successors or assigns, jointly and severally by these presents. Sealed with our seals, and dated this 4th day of March in the year of our Lord one thousand nine hundred and 21.

Whereas, lately at the Special Term, A. D. 1921, of the District Court of the United States for the Western District of Arkansas, in a suit depending in said court between Louisiana & Pine Bluff Ry. Co. plaintiff and United States defendant decree was rendered against the said plaintiff and the said plaintiff has obtained appeal of the said court to reverse the said decree in the aforesaid suit, and admonishing defendant to be and appear in the United States Supreme Court 30 days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said plaintiff shall prosecute said appeal to effect, and answer all costs if

it fail to make good its plea, then the above obligation to be
75 void, else to remain in full force and virtue.

Sealed and delivered in presence of
LOUISIANA & PINE BLUFF RY. CO., [SEAL.]
By LUTHER M. WALTER, [SEAL.]
MILTON WINHAM, [SEAL.]

Approved by
FRANK A. YOUMANS,
Judge.

76 *Memorandum Opinion.*

Filed in U. S. District Court March 4, 1921.

In Equity.

No. 44.

LOUISIANA & PINE BLUFF RAILWAY COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

Memorandum Opinion.

Per Curiam:

On July 29, 1914, the Interstate Commerce Commission entered an order making allowances to tap lines such as this plaintiff. So far as here material, those allowances were $3.00 per car for distances between 1 and 3 miles from loading to junction point and 1½ cents per 100 pounds for distances from 3 to 6 miles. Cars loaded with lumber at the platforms of the Union Saw Mill Company if hauled directly to the junction point at Dollar Junction travel slightly less than three miles but if taken by way of a track scale, located in the opposite direction from the junction, they travel 3.25 miles. The scales are located on the track of and controlled by the trunk line but the tap line has contractual rights to use that portion of the trunk line. In a decision and order of the Commission entered June 10, 1919, it was determined that the plaintiff could not include the distance of the scale haul and was entitled only to the charge of $3.00 based upon a haul of less than 3 miles. The basis of this decision was that it had not been shown that it was necessary for the tap line rather than the trunk line to take this weight. After denial by the Commission of a petition to modify this order, this complaint was filed to enjoin the enforcement of the above order of June 10, 1919.

Issues have been joined by answer and the United States has
77 filed a motion to dismiss. By consent of parties the matter has been heard on final submission upon the pleadings and a

subsequent supplemental order of the Commission introduced in evidence. This latter order is not regarded as affecting the issues.

The Commission (40 I. C. C., 470) interpreted and applied its order of July 29, 1914, which established the basis of tap line charges, as contemplating a direct haul from the loading point to the junction point without any diversion not made necessary to safely and properly reach such junction point. It there said (italics ours):

"In other words, the Pine Bluff, in order to bring about an increase in its earnings, claims to be entitled to compensation for an *out of line haul* to the scale track of nearly a mile. Were we to lend our approval to any such arrangement not only would the Pine Bluff be placed in a more advantageous position than any other tap line in this territory performing a similar service, but such a ruling would open the way in the case of many tap lines for a relocation of their track scales so as to require a long back haul, and in that way to lay a basis for divisions or allowances very materially in excess of those *fixed by the Commission for the distance covered by a direct movement from the mill to the junction.*"

We accept this interpretation, by the Commission, of the meaning of its own order not only because the order itself is clearly susceptible of such interpretation but because of the evil results (as set out in the above quotation) which might follow any other conclusion. As to the importance and imminence of such results we are inclined to respect the fears of the Commission for, as said by the Supreme Court in O'Keefe v. U. S. 240 U. S. 294, 303, "a tribunal such as the Interstate Commerce Commission, expert in matters of rate regulation, may be presumed to be able to draw inferences that are not obvious to others." Taking this as the meaning of this order we turn to its application to this action. The Commission has found in
78 this case (53 I. C. C. 475) that "The evidence does not show that it is necessary that the shipments be weighed by the tap line rather than by the trunk line." We cannot review this finding as we have only a portion of the evidence before us. Therefore, we find no error of fact in the findings of the Commission here involved nor any misapplication of law.

Therefore, the bill should be, and is, dismissed.

79 *Certificate.*

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the foregoing pages hereto attached numbered 1 to 78, inclusive, to be and constitute a true copy of the record and of the assignment of errors and of all proceedings in the case of Louisiana & Pine Bluff Railway Company vs. United States of America, as the same respectively appear on file and of record in my office as such clerk in the Texarkana Division of said District.

This transcript is transmitted in return of the appeal of the Louisiana & Pine Bluff Railway Company to the Supreme Court of the United States.

In testimony whereof, I hereunto set my hand and affix the seal of said court at office in the City of Fort Smith, Arkansas, this March 30, 1921.

[Seal of the District Court, Western District of Arkansas, U. S. A.]

WM. S. WELLSHEAR,
Clerk.

80 In the Supreme Court of the United States.

No. 859.

Louisiana & Pine Bluff Railway Company, Appellant,

v.

The United States of America and Interstate Commerce Commission, Appellees.

Stipulation.

It is hereby stipulated by counsel of record for the parties in the above-entitled proceeding that the Clerk of the Supreme Court of the United States shall cause to be printed as a part of the record in the above entitled proceeding the Sixth Supplemental Order of the Interstate Commerce Commission in The Tap Line Case, Investigation and Suspension Docket No. 11, made by said Commission on September 8, 1920, a copy of which is attached hereto.

LUTHER M. WALTER,
For Louisiana & Pine Bluff Railway Company.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
W. R. McFARLAND,
For the Interstate Commerce Commission

Washington, D. C., April 12, 1921.

81 Interstate Commerce Commission.

Washington.

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached is a true copy of Sixth Supplemental Order of the Commission, entered September 8, 1920, in Investigation and Suspension Docket No. 11, the Tap Line Case, the original of which is now on file and of record in the office of this Commission.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Commission this 11th day of April, A. D. 1921.

[Seal of the Interstate Commerce Commission.]

GEORGE B. McGINTY,
Secretary of the Interstate Commerce Commission.

82 *Sixth Supplemental Order.*

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 8th Day of September, A. D. 1920.

Investigation and Suspension Docket No. 11.

The Tap Line Case.

In the Matter of the Investigation and Suspension of Schedules Canceling Through Rates with Certain Tap Line Connections and Certain Other Cases Consolidated Herewith.

It appearing, That by the fifth supplemental order entered herein on April 7, 1919, the Commission fixed the maxima of allowances or divisions out of the rates on interstate shipments of lumber and forest products that may be received by the tap lines parties to this proceeding;

It further appearing, That in its report in Increased Rates, 1920, 58 I. C. C., 220, the Commission authorized certain increases of rates, and charges of railroads within the continental United States, and found that where carriers earn specific amounts as their compensation out of through rates or fares, such amounts should be increased in the same percentages as the through rates or fares;

It is ordered, That from and after the effective date of the increased rates authorized by the report of the Commission in Increased Rates, 1920, supra, the switching charges or divisions which may be paid to tap lines parties hereto by the trunk lines out of the rates on interstate shipments of lumber and forest products from points on said tap lines to the various groups defined in said report shall not exceed the following amounts, namely:

For switching a distance of one mile or less from the junction, $3.30 per car; over one mile and up to three miles from
83 the junction, $4.50 per car; on shipments from points over three miles and not over 10 miles from the junction, 3 cents per 100 pounds; over 10 miles and not over 20 miles from the junction, 4 cents per 100 pounds; over 20 miles and not more than 40 miles from the junction, 5 cents per 100 pounds; over 40 miles from the junction, 6 cents per 100 pounds.

Provided, That these divisions are to be the net amounts that may be paid out of the trunk line rates from the junction, and when the rates from points on the tap lines are made by the addition of

an arbitrary, the amount of such arbitrary shall accrue to the tap line.

It is further ordered, That the respective defendants herein shall file with the Commission on or before December 1, 1920, copies of their division sheets with each of their respective tap line connections, making effective the divisions authorized herein, which division sheets shall show the distances in miles from each station or shipping point to the junction with the issuing carrier, in addition to the amount of the divisions.

It is further ordered, That the fifth supplemental order entered herein on April 7, 1919, be, and the same is hereby, set aside.

It is further ordered, That this order, except the preceding paragraph, shall continue in force until the further order of the Commission.

By the Commission.

GEORGE B. McGINTY,
Secretary.

[SEAL.]

84 [Endorsed:] File No. 28,216. Supreme Court U. S. October Term, 1920. Term No. 859. Louisiana & Pine Bluff Ry. Co., appellant, vs. The United States et al. Stipulation and addition to record. Filed April 11, 1921.

Endorsed on cover: File No. 28,216. W. Arkansas D. C. U. S. Term No. 859. Louisiana & Pine Bluff Railway Company, appellant, vs. The United States of America. Filed April 7th, 1921. File No. 28,216.